

No. 82-5773

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IN THE SUPREME COURT OF THE UNITED STATES

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SUPREME COURT, U.S.

October Term, 1982

IN THE MATTER OF)
)
CONNIE MARIE MOORE and)
)
DONNIE LEE MOORE,)
)
Minors.)
)
Lillie Ruth Moore,)
)
Appellant,)
)
vs.)
)
Guilford County Department)
)
of Social Services,)
)
Appellee.)

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ON APPEAL FROM THE SUPREME COURT OF NORTH CAROLINA

JURISDICTIONAL STATEMENT

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QUESTIONS PRESENTED

I. Whether the termination of appellant's parental rights pursuant to North Carolina General Statutes §7A-289.32 denied her due process of law because said statute is unconstitutionally vague and the statute's requiring appellant to show a substantial change in the conditions that led to her children's removal for neglect impermissibly shifted the burden of proof from the Guilford County Department of Social Services (petitioner below) to the appellant (respondent below).

II. Whether the termination of appellant's parental rights in the absence of the annual judicial review now required by North Carolina General Statutes §7A-657 violated appellant's right to due process.

PARTIES TO THE PROCEEDING BELOW

Appellant Lillie Ruth Moore was appellant below. Appellee in the proceeding was the Guilford County Department of Social Services. M. Douglas Berry was guardian ad litem for the children.

28 U.S.C. §2403(b) may be applicable.

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OPINIONS BELOW

The opinion of the North Carolina Supreme Court is published unofficially at 293 S.E. 2d 127. The opinions of the North Carolina Court of Appeals and the Guilford County District Court are unpublished. All three opinions are reproduced in the Appendix.

JURISDICTION

The judgment of the North Carolina Supreme Court upholding the termination of the appellant's parental rights, from which appellant appeals, was entered on July 13, 1982. A petition for rehearing was denied on August 25, 1982. This appeal is being filed within 90 days of the date of the denial of rehearing.

The jurisdiction of this Court is invoked under Section 1257 of Title 28, United States Code.

Cases believed to sustain jurisdiction of this Court include Baggett v. Bullitt, 377 U.S. 360, 84 S. Ct. 1316, 12 L. Ed. 2d 377 (1964) and Santosky v. Kramer, ____ U.S. ____, 102 S. Ct. ____, 71 L. Ed. 2d 599 (1982).

STATUTORY PROVISIONS

United States Constitution, Amendment XIV, §1:

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

North Carolina General Statutes, §7A-289.32:

The court may terminate the parental rights upon a finding of one or more of the following:

(3) The parent has willfully left the child in foster care for more than two consecutive years without showing to the satisfaction of the court that substantial progress has been made within two years in correcting those conditions

which led to the removal of the child for neglect, or without showing positive response within two years to the diligent efforts of a county department of social services, a child-caring institution or licensed child-placing agency to encourage the parent to strengthen the parental relationship to the child or to make and follow through with constructive planning for the future of the child.

(4) The child has been placed in the custody of a county department of social services, a licensed child-placing agency, or a child-caring institution, and the parent, for a continuous period of six months next preceding the filing of the petition, has failed to pay a reasonable portion of the cost of care for the child.

North Carolina General Statutes §7A-657:

In any case where the judge removes custody from a parent or person standing in loco parentis because of dependency, neglect or abuse, the juvenile shall not be returned to the parent or person standing in loco parentis unless the judge finds sufficient facts to show that the juvenile will receive proper care and supervision.

In any case where custody is removed from a parent, the judge shall conduct a review within six months of the date the order was entered, and shall conduct subsequent reviews at least every year thereafter. The Director of Social Services shall make timely requests to the clerk to calendar the case at a session of court scheduled for the hearing of juvenile matters within six months of the date the order was entered. The Director shall make timely requests for calendaring of the yearly reviews thereafter. The Clerk shall give 15 days' notice of the review to the parent or the person standing in loco parentis, the juvenile if 12 years of age or more, the guardian, foster-parent, custodian or agency with custody, the guardian ad litem, and any other person the court may specify, indicating the court's

impending review.

The court shall consider information from the Department of Social Services; the juvenile court counselor, the custodian, guardian, the parent or the person standing in loco parentis, the foster-parent, the guardian ad litem; and any public or private agency which will aid in its review.

In each case the court shall consider the following criteria:

(1) Services which have been offered to reunite the family;

(2) Where the juvenile's return home is unlikely, the efforts which have been made to evaluate or plan for other methods of care;

(3) Goals of the foster care placement and the appropriateness of the foster care plan;

(4) A new foster care plan, if continuation of care is sought, that addresses the role the current foster parent will play in the planning for the juvenile;

(5) Reports on the placements the juvenile has had and any services offered to the juvenile and the parent;

(6) When and if termination of parental rights should be considered;

(7) Any other criteria the court deems necessary.

The judge, after making findings of fact, shall enter an order continuing the placement under review or providing for a different placement as is deemed to be in the best interest of the juvenile. If at any time custody is restored to a parent, the court shall be relieved of the duty to conduct periodic judicial reviews of the placement.

STATEMENT OF CASE

This action began in the District Court of Guilford County, North Carolina. Appellee Guilford County Department of Social Services (hereafter DSS) sought the termination of appellant Lillie Ruth Moore's parental rights, pursuant to N.C.G.S. §7A-289.32 in a petition filed in January, 1980.

Lillie Ruth Moore, the appellant-respondent, is the mother of Connie Marie Moore and Donnie Lee Moore, born July 27, 1968. In December, 1973, Mrs. Moore signed a dependency petition requesting that the Guilford County Department of Social Services take custody of the twins because their father was in jail and she was about to enter L. Richardson Hospital for psychiatric treatment. While she was hospitalized and immediately after, employees of the Department of Social Services counseled with her about leaving her husband, arranged for her to receive Supplemental Security Income benefits, and helped her locate an apartment. However, the Moores reconciled in January, 1974; in February, the Court ordered the children returned to them. Both before and after the children came back, the social worker stressed the importance of the family's not living with relatives, of separate rooms for the children, and of family stability.

After the return of the children, the Moores continued to have contact with the Department of Social Services. At Mrs. Moore's request, a social worker arranged for the twins to have their pre-school innocations and be enrolled in first grade. When Connie began school, she was reported as being disruptive in class, using inappropriate language, hitting other children, and acting out sexual intercourse. She complained of vaginal pain. Her parents did not respond to attempts by school personnel to confer with them. On

November 15, 1974, the principal went to the Moores' home and took the Moores to the school for a conference. A social worker took Mrs. Moore and the children to a health clinic, where Connie was treated for a vaginal inflammation. That day, the Department of Social Services filed a petition alleging that both children were neglected.

At the hearing in December, custody of the children was placed with the Department of Social Services, with Donnie to remain in the home under DSS supervision. Although Donnie was reported as sleeping a lot when he began school, there were no reports of disruptive behavior by him or of specific instances of neglect.

When Mr. Moore evinced hostility to the social worker then on the case, another social worker, Richard Gainer, took over, on April 1, 1975. Mr. Gainer familiarized himself with the Moores' records with DSS prior to his first visit to the family, a few days before a scheduled court hearing concerning Donnie's custody. When Mr. Gainer arrived for his first visit, he discovered that the Moores were facing eviction and Mr. Moore was in hiding because he expected to be arrested for failing to comply with a court order to pay a sum of money. Mr. Moore, according to Mr. Gainer, was quite hostile and was drinking heavily around this time.

In April, 1975, Donnie was placed in a foster home. From April, 1975, to February, 1976, Donnie was in four foster homes. From February 20, 1976 to July 24, 1979, he was in one foster home. The foster parents in the latter abruptly requested his removal when they began to have serious marital problems. From July, 1979, to September, 1980, he was in two foster homes. All together, he had been in six foster homes at the time of the termination hearing.

From December, 1974, to the time of the hearing, Connie had been in either seven or nine foster homes, in North Carolina Memorial Hospital for psychiatric treatment and in Thompson Children's Home. Between May, 1980, when she left Thompson, and the termination hearing in September, she had been in two homes.

After the children were removed, Mr. and Mrs. Moore continued to have economic and marital difficulties. They moved frequently and applied to DSS for help in finding housing and money. In December, 1975, they were in court on their Motion to get back their children. The Court found them "still unfit" and dismissed their Motion.

Mrs. Moore did not visit her children from July, 1976, to July, 1979. The social worker, Mr. Gainer, had some contact with her in June and August of 1977, but did not try to involve her in Connie's therapy, then in process. In September, 1978, Mr. Moore telephoned Mr. Gainer to arrange a visit with the children, with his fiancée present. Mr. Gainer would not allow a visit with the fiancée, and Mr. Moore did not visit. In May, 1979, Mrs. Moore telephoned, indicating that she was living in the mountains, expected to get a divorce soon, and wanted to see her children, but had no way of getting to Greensboro.

In July, 1979, Mrs. Moore visited with Connie at the office of DSS in Greensboro. She had obtained a ride to Greensboro with a relative. Since Donnie had just been moved from his foster home of three years, Mr. Gainer thought it wise that he not see his mother at that time and scheduled an appointment for Mrs. Moore some time later. Mrs. Moore had no way to get to Greensboro from the mountains for that visit and did not keep the appointment.

When Mrs. Moore received the termination petition in

February, 1980, she hired a cab to drive her to Winston-Salem where she could get a bus to Greensboro. She stayed with friends until she found a place in the country where she could have a garden and that would be suitable for the children. She enrolled at Guilford Technical Institute to learn to read and do basic arithmetic. She did not apply to DSS for financial or other aid.

From the time Mr. Gainer became the Moore family's social worker, the Department of Social Services took no affirmative steps to specifically strengthen Mrs. Moore's ties to her children. Visits with the children were limited to once a month for an hour to an hour and a half at DSS offices. The Department had decided prior to 1979 that it would be better for the children not to have contact with their parents; however, the Department did not actively discourage parental ties, but merely failed to encourage them.

Pursuant to its decision to seek termination and to try to place Connie and Donnie for adoption, the Department of Social Services filed a termination petition on January 17, 1980. Mr. Moore voluntarily released the children for adoption. Mrs. Moore filed an answer to the Petition and a hearing was held on July 15, 1980, to determine the issues. On September 24 and 25, 1980, a hearing on the previously determined issues was held, resulting in an Order to terminate Mrs. Moore's parental rights. At the latter hearing, the question whether N.C.G.S. §7A-289.32 was unconstitutionally vague was raised by Mrs. Moore's motion to dismiss for failure to state a claim for relief. The motion was denied.

The question of whether or not a denial of due process resulted from the failure to provide annual judicial review (now mandated by N.C.G.S. §7A-657) after custody

had been removed for neglect was raised during cross-examination of the social worker and in closing argument. The absence of annual judicial review seemed to be ignored by the trial court.

Both questions were preserved on appeal to the North Carolina Court of Appeals, which dismissed on grounds that the appeal was not timely filed, and on review by the North Carolina Supreme Court, a majority holding that N.C.G.S. §7A-289.32(2) had to be reasonably limited in time and was not so limited in the Moore case, but upholding the remainder of the statute without limiting it, and failing to address the question of the relevance of N.C.G.S. §7A-657.

WHY PLENARY CONSIDERATION IS REQUIRED

The questions presented by this case concern the fundamental integrity of the family, the obligations a government agency has towards the family when it intervenes on behalf of the children, and the circumstances under which that agency may act to destroy the family bonds.

Neither the law nor the Department of Social Services informed the Appellant of what conduct was required of her with sufficient specificity for her to conform her behavior to the state's expectations. Yet her parental rights were terminated because she failed to show "to the satisfaction of the court that substantial progress had been made within two years in correcting those conditions which led to the removal of the child[ren] for neglect." N.C.G.S. §7A-289.32(3). DSS issued no clear-cut, specific directives to the parents as to what they had to do to have the custody of their children restored to them. A statute dealing with so significant a loss as the termination of parental rights should give notice of what is expected to the same degree of adequacy as a criminal statute. Smith v. Goguen, 415 U.S. 566, 94 S. Ct. 1242, 39 L. Ed. 2d 605 (1974). Unless the court sets out what

will constitute "substantial progress" sufficient to satisfy the court, at a proceeding prior to a termination proceeding, a parent cannot be held to have been informed of what is required by the court (apparently, N.C.G.S. §7A-657, mandating annual review, is intended to address this difficulty). In the present case, neither DSS nor the court specifically told Mrs. Moore what she would have to do to come within the meaning of "substantial progress" to the satisfaction of the Court.

Parents have both a liberty and a privacy interest in the integrity of the family. Smith v. Organization of Foster Families, 431 U.S. 816, 97 S. Ct. 2094, 53 L.Ed. 2d 14 (1977), Prince v. Massachusetts, 321 U.S. 158, 64 S. Ct. 438, 88 L. Ed. 645 (1944). When the state intervenes to deprive parents of those interests by permanently terminating the most basic of human relationships, because erroneous deprivation will have such fundamental and irrevocable effects on both the parents and the children, the state must provide procedural safeguards of the highest order. Smith v. Organization of Foster Families, supra. The state should have the burden of proof at every stage of the proceedings to show that unsatisfactory conditions continue to exist and that a termination of parental rights is in the best interest of the children. The state should be required to show that it has provided or can provide care and nurture so superior to that of the parents that the best interests of the child require termination. In the present case, the evidence presented by DSS showed that the children had lived in a large number of foster homes: Connie in a total of nine and Donnie in seven. Although they were twins, except for their first placement, they lived in separate homes. Although their mother moved frequently, the children were not uprooted as a result of her moves. The children's moves, their separation from one another, and their changes of family were necessitated by their being in DSS custody and the way in which the system of

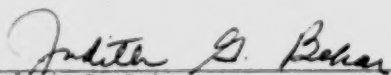
foster care often functions.

CONCLUSION

The Department of Social Services should have had the burden of proving by clear, cogent and convincing evidence, that Mrs. Moore had been specifically informed of what was expected of her in order that her parental rights not be terminated, that she had failed to meet those specific expectations, that she had failed to pay a reasonable portion of the cost of child-care, and that DSS had provided or with reasonable certainty could provide a stable home for the Moore children superior to the home their mother could provide and it was in the children's best interests that their mother's parental rights be terminated. By failing to require that proof and by failing to give adequate notice of the conduct required, in light of the interests at risk, the termination statutes deny the appellant important procedural safeguards and so violate her Fourteenth Amendment right to due process.

For these reasons, the questions presented are so substantial as to require plenary consideration, with briefs on the merits and oral argument, for their resolution.

Respectfully submitted,



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